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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 2.11.2006.

Jai Singh .... Appellant.

vs

Estate Officer, Station Headquarters, Ambala Cantt.
and another .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Jagram Singh Cooner,Advocate,for the appellant.

Kiran Anand Lall, J.

The trial court as well as the first appellate court have non-suited the appellant-herein (plaintiff no.2), in a suit for permanent injunction in which the plaintiffs had sought restraint of respondent no.1 from interfering in their peaceful possession (as owners) over the disputed property bearing khasra no.3/29 of khewat/ khatauni no.186 min/295 wherein the appellant has installed an Atta Chaki and also constructed a room. Respondent no.1 issued a notice dated 1.4.2000 to the appellant for demolition of the unauthorised construction on the site, and that notice was also challenged in the suit. The courts below held the same legal, while dismissing the suit.

In the suit, co-plaintiff Fateh Singh (proforma respondent no.2 herein) had claimed himself to be the owner of the site, whereupon the appellant had allegedly constructed a room and installed an Atta Chaki, in the year 1982, as a licensee under him. The case of appellant and the co-plaintiff was that respondent no.1 had no right to interfere with their possession over the disputed property, or to demolish the Atta Chaki or the

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room, existing thereon. The stand of respondent no.1, on the other hand, was that the appellant had encroached upon government land and had installed an Atta Chaki and also constructed a room on it. It was denied that the Atta Chaki and the room are in khasra no.3/29 which belongs to co-plaintiff Fateh Singh.

Both courts having recorded a concurrent finding of fact that the Atta Chaki and room exist on the land of respondent no.1 and the impugned notice dated 1.4.2000 issued by the latter is, therefore, legal, this regular second appeal can be entertained, only if any substantial question of law is shown to be involved in it, and not otherwise.

Learned counsel, however, could not point out any question of law, much less a substantial question of law, arising in this appeal for determination. The appeal is, therefore, liable to be dismissed on this ground, alone.

I would, however, like to mention that, as recorded in para no.14 of the trial court judgment, co-plaintiff (respondent no.2 herein) had earlier, too, filed a civil suit, along with one Sumer Chand, seeking restraint of respondent no.1 from interfering in their possession over the disputed site and also from demolishing his residential house constructed thereon, on the basis of notice dated 1.4.2000, issued by respondent no.1. That suit was dismissed by the court of Shri Jasbir Singh, Civil Judge (Junior Division), Ambala, on 5.6.2002. Appeal filed by co-plaintiff Fateh Singh against that judgment was also dismissed by the District Judge, Ambala, vide judgment dated 11.12.2002, certified copy Ex.DA. Falsity of the stand of the appellant is clear from still another fact, and that is, that though in the plaint of the present suit, his stand and that of his co-plaintiff Fateh Singh (respondent

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no.2-herein) was that he (appellant) is a licensee under his co-plaintiff, but when he appeared in the witness-box, as PW2, he took a complete somersault, by stating that he is owner of the disputed site as about 50 years back his father had (orally) purchased it from his co-plaintiff, Fateh Singh and further added (in cross-examination) that he or his father never paid any rent to his co-plaintiff Fateh Singh as sale consideration had already been paid to him (Fateh Singh). The contradictory stands taken by the appellant, one in the plaint, and other, as PW2, are indicative of nothing else but the falsity of the claim set up by him and his co-plaintiff, in the suit. Lastly, it may also be mentioned that nothing was produced on record to establish the plea that the disputed site forms a part of khasra no.3/29, owned by the appellant's co-plaintiff, Fateh Singh.

In view of the above, the appeal deserves to be dismissed in limine, and it is so ordered.

2.11.2006. (Kiran Anand Lall)
vs. Judge.